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REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 26 OF SECURITY COUNCIL RESOLUTION 687 (1991)

1. The Security Council, acting under Chapter VII of the Charter of the United Nations, adopted on 3 April 1991 resolution 687 (1991), paragraph 1 of which affirmed all 13 resolutions (660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991) concerning the situation between Iraq and Kuwait, except as expressly changed by resolution 687 (1991). By paragraph 26 of resolution 687 (1991) the Security Council requested the Secretary-General, in consultation with appropriate Governments, to develop within 60 days, for its approval, guidelines to facilitate full international implementation of paragraphs 24, 25 and 27 of resolution 687 (1991), and to make them available to all States and to establish a procedure for updating those guidelines periodically.

2. Paragraphs 24, 25 and 27 of resolution 687 (1991) read as follows:

> "The Security Council,
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> "...
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> "24. Decides that, in accordance with resolution 661 (1990) and subsequent related resolutions and until a further decision is taken by the Security Council, all States shall continue to prevent the sale or supply, or the promotion or facilitation of such sale or supply, to Iraq by their nationals, or from their territories or using their flag vessels or aircraft, of:
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> "(a) Arms and related matériel of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production, for such equipment;

"(b) Items specified and defined in paragraphs 8 and 12 above not otherwise covered above;

"(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in subparagraphs (a) and (b) above;

"(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in subparagraphs (a) and (b) above;

"25. Calls upon all States and international organizations to act strictly in accordance with paragraph 24 above, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

"...

"27. Calls upon all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Security Council under paragraph 26 above as may be necessary to ensure compliance with the terms of paragraph 24 above, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance".

3. Implementation of paragraph 24 of resolution 687 (1991) is to be effected in accordance with resolution 661 (1990) and subsequent related resolutions. Resolution 661 (1990) established a comprehensive set of sanctions to be implemented by all States against Iraq and occupied Kuwait, including the sale or supply of weapons or any other military equipment, whether or not originating in their territories, and any activities that promoted or were calculated to promote such sale or supply of such items. Under paragraph 3 of resolution 661 (1990), the Security Council established a committee consisting of all the members of the Council to undertake the tasks set out in that paragraph. By resolution 665 (1990), the Council called upon those Member States cooperating with the Government of Kuwait and deploying maritime forces to the area to use such measures commensurate to the specific circumstances as might be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990). By resolution 670 (1990) the Council confirmed that resolution 661 (1990) applied to all means of transport, including aircraft. With the specific purpose of preventing the carriage of any commodities or products prohibited under resolution 661 (1990) to or from Iraq or occupied Kuwait, resolution 670 (1990) established mandatory provisions concerning flights. Under those provisions the Council required all States, inter alia, to deny any aircraft permission to take off from or overfly their territory if such aircraft was destined to land in Iraq or occupied Kuwait, unless certain conditions were

met, as specified in paragraphs 3 and 4 of the resolution. The Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait was vested with specific responsibilities, including notification or approval procedures for such flights.

4. On the basis of the above observations, the Secretary-General undertook consultations with appropriate Governments, in accordance with paragraph 26 of resolution 687 (1991). The input from those consultations has been taken into particular account by the Secretary-General in the preparation of the draft guidelines called for by paragraph 26 of that resolution. The draft guidelines are herewith transmitted for the consideration of the Security Council (see annex).

Annex

Draft guidelines to facilitate full international implementation of paragraphs 24, 25 and 27 of Security Council resolution 687 (1991)

INTRODUCTION

1. The present guidelines have been developed in accordance with paragraph 26 of Security Council resolution 687 (1991), to facilitate full international implementation of paragraphs 24, 25 and 27 of that resolution.

I. CATEGORIES OF PROHIBITED ITEMS AND ACTIVITIES

2. For the purpose of the present guidelines, the items and activities proscribed are those referred to in paragraph 24, in conjunction with paragraphs 8 and 12, of resolution 687 (1991) and are the following:

(a) Arms and related matériel of all types, specifically including the sale or transfer through other means of:

(i) All forms of conventional weapons and military equipment, including for paramilitary forces, and spare parts and components and their means of production, for such equipment;

(ii) All chemical and biological weapons and all stocks or agents and all related subsystems and components;

(iii) All ballistic missiles with a range greater than 150 kilometres and related major parts;

(iv) Nuclear weapons or nuclear-weapons-usable material or any subsystems or components;

(b) All research, development, support and manufacturing facilities for the items as specified and defined in paragraphs 8 (a) and 12 of resolution 687 (1991);

(c) Repair and production facilities for all ballistic missiles with a range greater than 150 kilometres and related major parts;

(d) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items as specified in paragraphs 24 (a), 8 and 12 of resolution 687 (1991);

(e) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items as specified in paragraphs 24 (a), 8 and 12 of resolution 687 (1991).

II. UNITED NATIONS MECHANISM FOR MONITORING THE ARMS AND RELATED SANCTIONS

3. The Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter referred to as "the Committee") will be the organ of the Security Council responsible for monitoring the prohibitions against the sale or supply of arms to Iraq and related sanctions established in paragraph 24 of resolution 687 (1991) (hereinafter referred to as "arms and related sanctions"). The Committee will carry out its functions in accordance with the mandate provided in resolutions 661 (1990), 665 (1990) and 670 (1990) in so far as it relates to the items proscribed under paragraph 24 of resolution 687 (1991).

4. The Committee will closely cooperate and coordinate its activities with any present and future bodies that will, pursuant to paragraphs 10 and 13 of resolution 687 (1991), be responsible for the monitoring and verification of Iraq's compliance with the obligations set forth in paragraphs 10 and 12 of that resolution, in so far as they concern the acquisition of the items referred to in those paragraphs. The bodies referred to above will therefore have access to the Committee and will draw its attention to any problems that they may encounter in pursuing their mandate.

5. In discharging its tasks as regards the items referred to in paragraphs 8 (a) and 12 of resolution 687 (1991), the Committee will work in close cooperation with the Special Commission established under paragraph 9 of the resolution and with the International Atomic Energy Agency. In carrying out its work, the Committee will also be able to make use of any expertise or information relevant to its functions available elsewhere within the United Nations system.

6. For the purposes of the present guidelines, the functions of the Committee will be the following:

(a) To meet at regular intervals to examine reports submitted by the Secretary-General on the implementation of the relevant resolutions;

(b) To provide guidance to States and to international organizations, either upon their request or at its own initiative, on matters concerning the implementation of paragraph 24 of resolution 687 (1991), inter alia, through the elaboration, as necessary, of relevant criteria;

(c) To reach, in connection with subparagraph (b) above, when needed, agreed interpretations of items falling within the specified categories of proscribed items and activities;

(d) To seek information and maintain contact with States, international organizations and those non-governmental organizations whose activities and/or expertise are likely to promote strict implementation of the arms and related sanctions against Iraq;

(e) To bring to the attention of the States and international organizations concerned information reported to it of alleged violations of the arms and related sanctions against Iraq for appropriate action by those States and international organizations;

(f) To report at 90-day intervals to the Security Council on the implementation of the arms and related sanctions against Iraq contained in the relevant resolutions.

III. PRINCIPLES OF IMPLEMENTATION

7. The actual implementation of the arms and related sanctions against Iraq will be effected at three levels: by all States, by international organizations and through intergovernmental cooperation. States and international organizations are called upon to act strictly in accordance with the arms and related sanctions, notwithstanding the existence of any contracts, agreements, licences or any other arrangements.

A. States

8. All States should report to the Secretary-General within 45 days of the approval by the Security Council of the present guidelines on the measures they have instituted for meeting the obligations set out in paragraph 24 of resolution 687 (1991).

9. All States should ensure the institution or maintenance of national controls, procedures and other measures consistent with the present guidelines as may be necessary to ensure compliance with the terms of paragraph 24 of resolution 687 (1991). On that basis, States should ensure that these measures:

(a) Prevent any circumvention of the arms and related sanctions against Iraq, including but not limited to direct circumvention, indirect or clandestine circumvention, and circumvention through subcontracts to companies within the State itself or in other States;

(b) Prohibit the export to Iraq of those dual-purpose or multi-purpose items that States may have reason to believe will be used for military purposes;

(c) Ensure against the provision of any technology, research, personnel or materials for training or technical support services relating to the production, utilization, stockpiling, design, development, manufacture, use, maintenance or support for any of the items as described in paragraph 2 of the present guidelines;

(d) Require that the sale, licensing or other contracts with States or foreign companies contain end-user transfer assurances that ensure no

transfer, retransfer, transshipment or servicing to Iraq or to individuals or bodies inside Iraq or to individuals or bodies outside Iraq acting for the benefit of Iraq or of individuals or bodies inside Iraq of any of the items described in paragraph 2 of the present guidelines;

(e) Require from exporters and other commercial intermediaries a declaration that the items for export described in paragraph 2 of the present guidelines are not destined for Iraq directly or through third-party arrangements;

(f) Provide for legal powers to inspect documents and goods and to detain and seize goods where appropriate;

(g) Impose appropriate penalties for non-compliance in their territories and by their nationals elsewhere, and to notify the Committee of all incidents of such non-compliance.

10. Nothing in the present guidelines will preclude any State or group of States from adopting further measures aimed at achieving effective implementation of the arms and related sanctions against Iraq, in accordance with the relevant provisions of resolution 687 (1991).

11. States should ensure that the provisions of the national measures instituted by them are adequately publicized and disseminated within their territories and among their nationals elsewhere, particularly to arms technology developers, producers, traders and exporters and to the transport sector. In implementing the present guidelines, States should pay particular attention to companies known to have been involved in illegal arms procurement activities on behalf of Iraq.

12. States are requested to report to the Committee any information that may come to their attention relating to possible violations of the arms and related sanctions against Iraq committed by other States or foreign nationals. In this regard, States are reminded of their duties under paragraph 7 of resolution 661 (1990) to cooperate fully with the Committee in the fulfilment of its task, including supplying such information as may be sought by the Committee.

13. States ought to consult the Committee on the question whether certain items fall within the provisions of paragraph 24 of resolution 687 (1991), as well as in cases relating to dual-use or multiple-use items, that is to say, items meant for civilian use but with potential for diversion or conversion to military use.

B. International organizations

14. In accordance with paragraphs 25 and 27 of resolution 687 (1991) international organizations should take all appropriate steps to assist in ensuring full compliance with the arms and related sanctions against Iraq,

including providing to the Committee any relevant information that may come to their attention.

15. International organizations having any dealings with, or activities in, Iraq should carefully review their programmes to make sure that they do not facilitate any of the activities prohibited under paragraph 24 of resolution 687 (1991). Paragraph 13 above shall also apply to international organizations.

C. Intergovernmental cooperation

16. States are encouraged to cooperate with each other bilaterally or within the framework of existing regional or other appropriate intergovernmental organizations or through other appropriate intergovernmental arrangements in the implementation of the arms and related sanctions against Iraq. Such cooperation would be particularly useful in matters, among others, of verification of the origin and destination of the items specified in paragraph 24 of resolution 687 (1991), as well as in the exchange of documentary evidence relating thereto.

IV. REVIEW OF THE GUIDELINES

17. Taking into account Iraq's compliance with resolution 687 (1991), the general progress towards the control of armaments in the region, information received from States and international organizations and from the Committee, the Security Council may wish to review the guidelines at the same time as its regular reviews of paragraphs 22, 23, 24 and 25 of resolution 687 (1991), as set out in paragraph 28 of the same resolution, that is to say, with the first review being undertaken 120 days after the adoption of that resolution.

18. The Security Council may also wish to consider, in the light of any comments or reports that the Committee may make to it, what further action may be necessary to ensure the implementation of the arms and related sanctions against Iraq.